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WASHINGTON, DC 20005

EXAMINER
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PEYTON, TAMMARA R

ART UNIT	PAPER NUMBER
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2182

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/553,337	<b>Applicant(s)</b> REISMAN, RICHARD R.	
	<b>Examiner</b> TAMMARA R. PEYTON	<b>Art Unit</b> 2182	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 114-122, 124-126, 128-141, 143-145, 147-155, 157-161, 163-173, 175-179 and 181-202 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims pending in the application are 114-122,124-126,128-141,143-145,147-155,157-161,163-173,175-179 and 181-202.

Applicant is advised that the Final Rejection Office Action mailed 11/27/2009 is vacated in view of the newly discovered reference of Kleinerman (US 5,734,871).

### **DETAILED ACTION**

#### **Information Disclosure Statement**

Regarding the IDS filed it is desirable to avoid the submission of long list of documents if it can be avoided. Eliminate clearly irrelevant and marginally pertinent cumulative information. If a long list is submitted, highlight those documents which have been specifically brought to applicant's attention and/or are known to be of most significance. See *Penn Yan Boats, Inc. v. Sea Lark Boats, Inc.*, 359 F. Supp. 948, 175 USPQ 260 (S.D. Fla. 1972), *aff'd*, 479 F.2d 1338, 178 USPQ 577 (5th Cir. 1973), *cert. denied*, 414 U.S. 874 (1974). But cf. *Molins PLC v. Textron Inc.*, 48 F.3d 1172, 33 USPQ2d 1823 (Fed. Cir. 1995).

An applicant's duty of disclosure of material and information is not satisfied by presenting a patent examiner with "a mountain of largely irrelevant [material] from which he is presumed to have been able, with his expertise and with adequate time, to have found the critical [material]. It ignores the real world conditions under which examiners work." *Rohm & Haas Co. v. Crystal Chemical Co.*, 722 F.2d 1556, 1573 [ 220 USPQ 289 ] (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). (Emphasis in original). Patent applicant has a duty not just to disclose pertinent prior

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art references but to make a disclosure in such way as not to "bury" it within other disclosures of less relevant prior art; See *Golden Valley Microwave Foods Inc. v. Weaver PopcornCo. Inc.*, 24 USPQ2d 1801 (N.D. Ind. 1992); *Molins PLC v. Textron Inc.*, 26 USPQ2d 1889, at 1899 (D.Del. 1992); *Penn Yan Boats, Inc. v. Sea Lark Boats, Inc. et al.*, 175 USPQ 260, at 272 (S.D. Fl. 1972)

Accordingly, unless applicant specifically indicates the documents that are material to the claims of the current application in a new IDS - by pointing out the relevancy of the documents that are material to the claims of the current application, the examiner will consider that none of the documents in the new IDS are material to the claims of the current application, that the documents are presented in an abundance of caution.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 114, 116-122, 124-126, 128-131, 133-141, 143-145, 147-150, 152, 153-155, 157-161, 163-172, 175-179, 181-202, are rejected under 35 U.S.C. 103(a) as being unpatentable over

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Kleinerman (US 5,734,871), "RIPscrip Graphics Protocol Specification," July 19, 1993, (the language code of *Qmodem*) and Microsoft Press' Computer Dictionary, 2<sup>nd</sup> Edition, 1993, previously cited as prior art) and *Zellweger* (US 5,630,125), cited as prior art 01/17/06.

As per claims 114, 124, 128-131, 133, 147-150, 152-155, 171, 172, 175-179, and 181-202, *RIPscrip/Qmodem* teaches a computer program product comprising a tangible computer readable medium having instructions stored hereon, the instructions comprising a first instructions executable at a user station, for selecting among a plurality of available online services to support an application function; and second instructions executable at a user station, for directing the establishment and use of a communication link between the user station and each online service, when the online service is selected.

As discussed in previous Office Actions *Qmodem* is software application for a user's modem that is usually pre-installed on the user's computer however executable floppy disks are provided if needed. *Qmodem* is pre-installed with a dialing directory phone book that includes access numbers for a host of online service functions that the user may choose to dial. The user may scroll down the available numbers and when a particular choice is highlighted the user may dial that highlight choice. Another example of online service function available are Bulletin Board Systems (BBS) (Forbin Project, Sound of Music, Hayes Support BBS or the Sail Air PCBoard. (pg. 110)) Each of these BBSs have different access numbers that the user may choose to dial. Specifically, the user may choose to dial into a BBS to post messages to other BBS users in special areas devoted to a particular topic. BBS also allows user to chat online with other

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users, send e-mail, download and upload files, and access the Internet. It is obvious that once the number is dialed and the modem connects the selected online service function's server, handshaking between the user's modem and the remote modem is done thereby establishing a communication link between the user station and the online service function's service. (pgs. 139, 152-167, 176-179)

Applicant previously argued that *Qmodem* does not permit the use of a graphical user interface, *Qmodem* (and *QmodemPro*) is/are a terminal emulator wherein it has no provision for downloading customized graphical user interfaces (GUI) from multiple online service providers, and no provision for executing program logic as an element or function of the downloaded GUIs. However, Examiner previously argued that pgs. 55-57 the RIPscrip.pdf which discloses wherein an executable file associated with an application function may be downloaded to enable the processor to present the user with *different customized* graphical user interface for each different online service functions in advance of their execution. (See the whole document pgs. 1-91)

-----  
RIP\_READ\_SCENE  
-----

Function: Playback local .RIP file  
Level: 1  
Command: R  
Arguments: res:8 filename...  
Format: !|1R <res> <filename>

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Example: !|1R00000000testfile.rip

Uses Draw Color: YES

Uses Line Pattern: YES

Uses Line Thick: YES

Uses Fill Color: YES

Uses Fill Pattern: YES

Uses Write Mode: YES

Uses Font Sizes: YES

Uses Viewport: NO > v1.54

**This command instructs the remote terminal to playback a local .RIP file. The current execution of RIPscrip commands will be temporarily suspended and the contents of the designated RIP file will begin executing. Regardless of whether or not the current RIPscrip code coming across the modem is in the middle of a line or not, the RIP playback file will be assumed to start at the beginning of a line. Therefore, if a RIP READ SCENE command is located in a .RIP file, it must be the very last command on the line, followed by a carriage return instead of a command delimiter (!). This ensures that the loaded .RIP file will begin executing properly with the correct delimiters found in the correct places.**  
**The RIP playback file can alter colors, fonts, or whatever. Once the playback of the file is complete, the remaining RIPscrip code that was temporarily suspended will be resume execution. Any changes that appeared in the loaded playback file will remain in effect when the resumed code is processed. In other words, if you change a color or a font in the playback file and leave them changed, they will remain in effect during the resumed execution.**

NOTE: The <res> parameter is reserved for future development by TeleGrafix. It should be set to "00000000" for compatibility with future releases.

Therein, *Qmodem* is capable of storing and executable at a user station, and associated with said application function for presenting the user with different customized graphical user interfaces for different selected online services in support of said application function; wherein, the different customized graphical user interfaces at least one elements of a common user



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interface software package (Note claims 131, 184, 190, 199) and portions of the third computer program code are downloaded from the selected online service in advance of their execution.

Examiner believes that with the reading of RIPscript that it would have been obvious to one of ordinary skill in the art at the time of invention that *Qmodem* supports a user selecting a publisher's service function and dialing into the publisher's network and that the publishers could download to the user station an individual customized interface via connection to the publisher's service. Specifically, *Qmodem* discloses a plurality of online service functions or BBS including Forbin Project, Sound of Music, Hayes Support BBS or the Sail Air PCBoard. (pg. 110) that each have individualize customized interfaces, i.e. (different use of color, frames, layout, font color and/or font size) that is download from the publisher's server. Further, one of ordinary skill would readily recognize that any changes to the online-service provider's user interface is stored so that when the user subsequently dials into the server of the online-service providers the same changes would be reloaded.

Examiner is maintaining the position that the user of a graphical user interface with a DOS-based interface would have been an obvious implementation of a well-known interface in the art. Specifically, Microsoft Press defines a graphical user interface as "a type of display format that enables the user to choose commands, start programs, and see list of files and other options....choices can generally be activated either with the keyboard or with a mouse...for application developers, GUIs offer an environment that takes care of the direct interaction with the computer...this frees the developers to concentrate on the application without getting bogged down in the details of screen display or mouse and keyboard input...its also enables

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programmers to create programs that always handle frequently performed tasks...in the same way because the interface provides standard controlling mechanisms such as windows and dialog boxes.” (see pg. 185)

However, *Zellweger* teaches the use of DOS based applications incorporating the use of GUI. Specifically, *Zellweger* teaches an information management system that implements an open hierarchical data structure, wherein the system is designed to run on DOS in either a text mode or a GUI mode. *Zellweger*'s software system incorporates the use of GUI in DOS based applications by simulating a graphical user interface with customized character based menus that is generated by an application module (col. 12, lines 38-col. 14, lines 1-61, cols. 17-26). Examiner is taking the position that the use of a graphical user interface with a DOS-based interface would have been an obvious implementation of a well-known interface in the art.

Therefore, one of ordinary skill in the art would readily recognize that it would have been obvious to implement a GUI as the user interface to *RIPscript/Qmodem*'s DOS environment, as taught by *Zellweger*, because the DOS environment is a known field of endeavor that may prompt variations; therein, the design incentives or previous market forces provide a reason to make such a predictable adaptation, such as the incorporation of a GUI user interface with the *RIPscript/Qmodem*'s application would furthermore give the user the ability to make interactions with other applications easier.

As to the Applicant's claimed language filed 5/22/2009 implementing the use of instructions to form an application programming interface, *Kleinerman* teaches a system where

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the second computer system performs operations on data and instructions and the host computer systems generates presentation information based on the application programs, involves establishing selected parameters in the host computer presentation information, interpreting selected where the host computer system generates application presentation information.

Specifically, *Kleinerman* teaches the use of a middleware produce utilizing API (in combination with other interface managers) that permits the host/client computer (See Figs. 1-16, Abstract, cols. 1, lines 23-col. 28) to exchanges messages or information (i.e. available network/online service) with a plurality of other computers/servers on the network. Examiner is taking official notice that *Kleinerman* teaches utilizing an API (in combination with other interface managers) that takes an application program interaction between the host/computer with a seamless programmed interaction between the network/online service and this also would obviously include exchanging messages or information. Therein, this seamless interaction would not exclude having a generic interface between the host/computer and the network/online service. Further, to assist applicants should they chose to challenge the examiner's Official Notice, the examiner is pointing out that following the KSR decision by the Supreme Court, the Office has changed its policy related to Official Notice. (See MPEP 2144.03 C.) The Office now requires applicants to provide persuasive evidence and/or arguments directly refuting the Official Notice before a supporting reference is to be supplied by the examiner.

Therefore, one of ordinary skill in the art would readily recognize that it would have been obvious to implement an API as the generic user interface to *RIPscript/Qmodem/Zellweger* environment, as taught by *Kleinerman*, because the API environment is a known field of endeavor that may prompt variations; therein, the design incentives or previous market forces

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provide a reason to make such a predictable adaptation, such as the incorporation of *Kleinerman's* API generic user interface with the *RIPscript/Qmodem/Zellwegar* application would furthermore give the user the ability to gain access to a plurality of application services online with a generic user interface that would permits one computer program to request the services of another computer program. Further, this claim would have been obvious because a person of ordinary skill has good reason to pursue the known options with his or her technical grasp. This leads to the anticipated success and is the product not of innovation but of ordinary skill and common sense.

Applicant current amendment includes the claim language "wherein the third instructions receive via the API a response to the functional request from the online service in the background, thereby permitting the graphical user interface to continue operation."

In regards to applicant's argument that *Kleinerman* in effect teaches away from API performing "in the background," *Kleinerman* teaches the benefits of an API interface allowing for a generic client/host interface capable of communicating a functional request (message or application) associated with the application function. Further, the definition of "in the background" is not defined by the claim in such a way that will not further distinguish the claim invention in terms of patentability, i.e. there is no clear definition of what is meant by "in the background."

Therefore the Examiner has consulted applicant's specification for further definition and clarification. The specification state that "in the background" is be completely invisible to or transparent to the user of a program running on their system. Applicant is arguing the claimed limitation as the most novel and distinguishing idea of the invention without sufficient support or disclosure in the claim that embodies and performs the feature. To one of

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ordinary skill in the art would recognize that a reference "teaches away" when it states that something cannot be done. *See In re Gurley*, 27 F.3d 551,553, 31 USPQ2d 1130, 1131 (Fed. Cir 1994). The examiner could find no statement in *Kleinerman* to the effect that the API is not running "in the background" or completely invisible to or transparent to the user of a program running on their system. The Examiner maintains that one skilled in the art is presumed to know something about the art apart from what the references literally disclose. (See *In re Jacoby*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962)). Further, "the conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference." (*In re Bozek*, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969)). Therein, Examiner is taking the position that some of the programs of *Kleinerman's* could run "in the background" and the interpretation of the broad phrase "in the background" is sufficient to preclude patentability as claimed and defined by Applicant.

As to Applicant's argument regarding the effective filing date Examiner notes that US Patent 5,228,137 has an effective date of 07/09/1990, Examiner is using *Kleinerman's* US Patent 5,734,871, thereby making Applicant's argument regarding *Kleinerman* used as prior art moot.

As per claim 116, it would have been obvious to one of ordinary skill that, handshaking between the user's modem and the remote modem is performed using *RIPscript/Qmodem's* communication parameters (pg. 19) for its communication port to effectuate some data transfer between the user station and the online provider.

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As per claims 117 and 136, *RIPscript/Qmodem/Zellweger* in combination with the API of *Kleinerman* teaches an application programming interface that is user friendly (obvious, *Kleinerman*) in which interaction with the user is simplified.

As per claims 118-122, 138-141, and 143, an object manifest is defined in the specification as conveying the status of a transport operation and to provide for additional information when needed. *RIPscript/Qmodem's* teaches an object manifest to effectuate data transfers with communication parameters (pg. 19) for its communication port and its file transport protocols between the user station and the selected online service provider and *Kleinerman* teaches the API.

As per claims 125, 126, 134, 135, 137, 144, 145, 157-161, 163-170, *RIPscript/Qmodem's* that data transport instruction function that effectuates data transfers between the user station and a selected one of the independently-operated data sources via the non-proprietary network. One of ordinary skill would readily recognize that the software application *RIPscript/Qmodem* would use the communication parameters (pg. 19) for its communication port to effectuate some data transfer between the user station and the online provider. It is the position of the Examiner that the software application *Qmodem's* pre-installed dialing directory phone book gives the user the option to select between different independently operated data sources via a non-proprietary network. Further, *Kleinerman* teaches using proprietary and non-proprietary networks.

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Claims 115, 132, 151, 154 ,172, 175-190, are rejected under 35 U.S.C. 103(a) as being unpatentable over “RIPscrip Graphics Protocol Specification,” July 19, 1993, (the language code of *Qmodem*), *Microsoft Press, Zellweger, Kleinerman*, and in further view of *Pettus*, US 6,031,977 – cited Prior Art, page # 7.

As per claims 115, 132, 151, 154 ,172, 175-190, *RIPscript/Qmodem*’s does not expressly a set of translators and protocol drivers for each operated data source already stored on the user station, because, *Qmodem* teaches wherein the user has to download external protocols to facilitate a communication link between the user’s modem and some remote modems.

(*Qmodem*, pg. 32-34, pg. 153,161)

*Zellweger* teaches a Retrieval module 3 that reside on the hard drive 30 on the user station. The Retrieval module 3 provides a means for transferring product orders from the user station to the suppliers. *Zellweger* also teaches an alternative embodiment wherein the Retrieval module 3 includes configuration and functional components that are installed and executed on an end-user computer or executed on a remote computer. (*Zellweger*, Abstract, col.7, lines 43-col. 8, lines 1-34, col. 13, lines 14-col. 16, line 1-15, Fig. 2)

However, *Pettus* discloses a local communication directory service that allows a user to browse and select information that is located on remote libraries. The user station stores a network address and service object (protocol driver) associated with each available service offered on a communication network. If the user desires to acquire access to a remote service listed in the communication directory the appropriate protocol drivers are utilized to facilitate

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establishment of the communication link. (*Pettus*, col. 4, lines 12-38, Fig. 11, col. 15, lines 19-col. 16, lines 1-40)

It would have been obvious to one of ordinary skill that *Qmodem-Zellweger- Kleinerman* would have been motivated to include specific protocol drivers for each operated data source, as disclosed by *Pettus*, thereby elevating the user in the details for downloading specific protocols that will facilitate a communication link between the user's modem and some remote modems.

### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The examiner requests, in response to this office action, support be shown for language added to any original claims on amendment and any new claims. That is, indicate support for newly added claim language by specifically pointing to page(s) and line number(s) in the specification and/or drawing figure(s). This will assist the examiner in prosecuting the application. When responding



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to this office action, applicant is advised to clearly point out the patentable novelty which he or she thinks the claims present, in view of the state of art disclosed by the references cited or the objections made. He or she must also show how the amendments avoid such references or objections. See 37 C.F.R.1.111(c) .

In amending in reply to a rejection of claims in an application or patent under reexamination, the applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view the state of the art disclosed by the references cited or the objections made. The applicant or patent owner must also show how the amendments avoid such references or objections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tammara Peyton whose telephone number is (571) 272-4157. The examiner can normally be reached between 6:30 - 4:00 from Monday to Thursday, (I am off every first Friday), and 6:30-3:00 every second Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-2100.

/Tammara R Peyton/

Primary Examiner, Art Unit 2182

January 05, 2010